

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE

EARL VANTREASE, JR. v. WAYNE BRANDON, Warden

**Appeal from the Circuit Court for Hickman County
No. 06-5053C Jeffrey S. Bivins, Judge**

No. M2006-02414-CCA-R3-HC - Filed December 14, 2007

The Petitioner has filed a Petition for Rehearing to have this Court reconsider its opinion previously filed in this case. This Court held that the Petitioner had stated a cognizable claim for habeas corpus relief, but we affirmed summary dismissal due to the Petitioner's failure to attach the requisite documentation in support of his claim that the judgment was void. The Petitioner has now provided further documents in support of his claim. The Petition for Rehearing is granted.

Opinion on Petition for Rehearing; Judgment of the Circuit Court Reversed; Remanded

DAVID H. WELLES, J., delivered the opinion of the court, in which JAMES CURWOOD WITT, JR., and D. KELLY THOMAS, JR., JJ., joined.

Earl Vantrease, Pro Se.

Robert E. Cooper, Jr., Attorney General and Reporter and Benjamin A. Ball and Daniel Lins, Assistant Attorneys General, for the appellee, State of Tennessee.

OPINION GRANTING PETITION FOR REHEARING

The Petitioner has filed a Petition for Rehearing, pursuant to Rule 39, Tennessee Rules of Appellate Procedure, to have this Court reconsider its opinion previously filed in this case on October 9, 2007. This Court held that the Petitioner had stated a cognizable claim for habeas corpus relief, but we affirmed summary dismissal, citing to State v. Summers, 212 S.W.3d 251, 261 (Tenn. 2007), due to the Petitioner's failure to attach the requisite documentation in support of his claim that the judgment was void.

Along with his Petition for Rehearing, the Petitioner has again attached further documentation in support of his claim that the judgment of conviction for aggravated robbery is void because he has previously been granted post-conviction relief from that conviction and the conviction has been vacated. In our previous opinion, we noted that the record did not contain (1)

an order of the trial court reflecting that post-conviction relief was granted and the conviction vacated or (2) a transcript from the underlying proceedings showing that he was granted post-conviction relief. The Petitioner has now attached a transcript of the July 25, 2003 sentencing hearing and an order of the trial court; both show that he was granted post-conviction relief and that the aggravated robbery conviction was vacated. The Petitioner asserts that he originally filed these documents with his petition and that these documents reflected a “stamp-filed” date of July 31, 2006, the same day the habeas corpus petition was filed. He asserts that the clerk of the Hickman County Circuit Court failed to transmit a complete record to this Court on appeal and states, “[T]his isn’t the Pet’rs fault although he is sorry that the habeas court did not carry out it’s end.”

First, the transcript of the July 25, 2003 sentencing hearing provided by the Petitioner does show that the Petitioner was granted post-conviction relief. After imposing a sentence of sixteen years and denying the Petitioner’s motion for new trial, the trial court inquired of the Defendant if he had anything he “would like to add or say[.]” The Petitioner then stated his concerns with trial counsel’s representation:

I had about thirty (30) witnesses who wanted to come to trial and testify in my defense and my attorney was well aware of this. But he, my attorney, tried to con me out of more money—my attorney told me that he couldn’t do so unless I gave him five hundred (500) more dollars so he could hire an investigator to track down my witnesses.

Trial counsel responded that “maybe” the Petitioner was correct that he had not been represented “properly.” Trial counsel continued that he was “just tired of representing” the Petitioner and that he “would love to be off of this case.”

Without any further proof, the trial court ruled that there existed a “conflict of interest” between the Petitioner and trial counsel and vacated the sixteen-year sentence and conviction for aggravated robbery. According to the transcript, the court allowed a conviction for criminal impersonation to stand.

The Petitioner has also provided an order dated April 2, 2004, and signed by the trial judge. The order states that the Petitioner sought post-conviction remedies in his amended motion for new trial, reflects that the aggravated robbery conviction and sentence is vacated, and also shows that the conviction for criminal impersonation is reversed and the charges dismissed.

While questionable in nature, the documentation now provided by the Petitioner is sufficient to support his claim. An evidentiary hearing is required to determine whether all of the documents provided by the Petitioner, including those referenced in the original opinion and those referenced herein, are authentic. This Court is not in a position to determine the authenticity of these documents, as such a determination implicates fact-finding authority; our jurisdiction is appellate only. See Tenn. Code Ann. § 16-5-108. If the documents are determined to be authentic, then the Department of Correction is without further authority to detain the Petitioner. If the documents are

determined to be forged, the Petitioner has attempted to perpetrate a fraud upon the court in order to obtain habeas corpus relief, and any action deemed appropriate may be commenced against the Petitioner.

Upon due consideration, we conclude that the Petition for Rehearing is well taken and should, therefore, be GRANTED. Accordingly, for good and sufficient reasons appearing to the court, the opinion in this case should be amended to reflect that the judgment of the trial court dismissing the habeas corpus petition is reversed. This case is remanded for an evidentiary hearing on the merits of the petition. The original opinion is modified to incorporate the contents of this opinion granting the Petition for Rehearing.

It is further ORDERED that the judgment previously filed in this cause is vacated, and the clerk of the appellate court shall enter and file in its place the judgment submitted herewith.

DAVID H. WELLES, JUDGE